

No. 12222.

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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LOEW'S INCORPORATED, a corporation,

*Appellant,*

*vs.*

LESTER COLE,

*Appellee.*

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## APPENDIX TO APPELLANT'S OPENING BRIEF.

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## APPENDIX TO APPELLANT'S OPENING BRIEF.

### I.

#### State Statutes Cited.

*California Criminal Syndicalism Act* [Cal. Stats., 1919, p 281]:

"Section 1. The term 'criminal syndicalism' as used in this act is hereby defined as any doctrine or precept advocating, teaching or aiding and abetting the commission of crime, sabotage (which word is hereby defined as meaning wilful and malicious physical damage or injury to physical property), or unlawful acts of force and violence or unlawful methods of terrorism as a means of accomplishing a change in industrial ownership or control, or effecting any political change.

"Sec. 2. Any person who:

\* \* \* \* \*

"4. Organizes or assists in organizing, or is or knowingly becomes a member of, any organization, society, group or assemblage of persons organized or assembled to advocate, teach or aid and abet criminal syndicalism;"

\* \* \* \* \*

"Is guilty of a felony and punishable by imprisonment in the state prison not less than one nor more than fourteen years."

*California Code of Civil Procedure:*

"Section 1854: When part of a transaction proved, the whole is admissible. When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other; when a letter is read, the answer may be given; and when a detached act,

declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing, which is necessary to make it understood, may also be given in evidence.”

“Section 1960: When an inference arises. An inference must be founded:

“1. On a fact legally proved; and,

“2. On such a deduction from that fact as is warranted by a consideration of the usual propensities or passions of men, the particular propensities or passions of the person whose act is in question, the course of business, or the course of nature.”

“Section 2102: Questions of law addressed to the court. All questions of law, including the admissibility of testimony, the facts preliminary to such admission, and the construction of statutes and other writings, and other rules of evidence, are to be decided by the court, and all discussions of law addressed to it. Whenever the knowledge of the court is, by this code, made evidence of a fact, the court is to declare such knowledge to the jury, who are bound to accept it.”

### *California Civil Code:*

“Section 1698: [Written contracts, how modified.] A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.”

## II.

### Federal Statute Cited.

*U. S. Code*, Title 28, Sec. 144:

“§144. Bias or prejudice of judge.

“Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has



a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

“The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit as to any judge. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.”

### III.

#### Excerpts From Record in Various Cases Cited.

1. *Moskun v. U. S.* (C. C. A. 6), 143 F. 2d 129.

The following excerpt from the Record on Appeal shows the comments of the trial court which were the subject of the decision cited:

“The Court: Well, you are not the only one. I didn’t get one of these, and what I don’t like about some of these things, and you do yourself more harm than you do good, but I got a letter from the President—what is his name?

“Mr. O’Brien: Mr. Thomas:

“The Court: Mr. Thomas, I don’t know what it is, but he wrote me a long letter. That is not the way cases are tried in Court. They ought to have a different appreciation of legal procedure. The President of a Union has no more influence than the ordinary witness that comes along, and why does he write me a letter? Why does he write me a letter, the Judge who is hearing the case? I don’t like that at all. It looks to me as though you are putting on the pressure. I am not opposed to Unions, but if the Unions would use a little discretion and judgment,

you would get along better. You can't go into a Court, and put the heat on.

"Mr. Eden: I had not seen that—

"The Court: Here is something here, I don't know what it is. (Reads resolution on Nicholas Moskun, Exhibit F.)

"I consider that a damned insult, if you want the plain English of it, and the petition here for citizenship is denied. If you think they can put the heat and the pressure on the Courts, we give them notice now they can't do it.

"Mr. Eden: May it please the Court, I don't think Mr. Moskun's citizenship—

"The Court: I don't know anything about it, but it looks to me as though some of you people have got an idea you can run the Courts. It can't be done. I sought to try this case and to hear it on the facts presented.

"Mr. Eden: I think Your Honor has, and I think Your Honor should decide it on the facts.

"The Court: I am deciding it on the facts now, and I based them on the opinion I had before, and those facts and the evidence in that case showed this man guilty of such misconduct that indicated to the Court that he wasn't favorable to our form of government, and under our Constitution of the United States tended to act in a very revolutionary manner. We have all got to abide by the laws whether union men or whether you are non-union men. I say to you now I have no feeling against the union, but just to show you those fellows can't be encouraged in trying to put the pressure, I make this decision now, and I deny the petition for citizenship.

"Mr. Eden: I would like to ask the Court to consider the evidence presented on Mr. Moskun's petition, and not on somebody's resolution, over which he has no control.



“The Court: All right, the petition is denied. You may prepare an order and appeal.”

2. *Lewis v. U. S.* (C. C. A. 8), 14 F. 2d 369.

The following is the affidavit, filed in respect of the disqualification of the District Judge, referred to but not quoted in the opinion cited:

“The affiants Allie E. Lewis and William Lloyd Lewis respectfully represent and state that jointly and severally they verily believe and charge that his Honor, Judge Franklin E. Kennamer, has a personal bias and prejudice against them and each of them and in favor of the Government, by reason of which said Judge is unable to impartially exercise his functions as Judge in this case; that by reason of said personal bias and prejudice neither of these defendants can receive a fair and impartial trial before him. The grounds for the defendants’ beliefs are the following facts, to-wit:

“The defendants state upon information and belief that the Honorable Franklin E. Kennamer, in the City of Tulsa, Oklahoma, after the organization of the United States District Court for the Northern District of Oklahoma, created and organized pursuant to the Act of Congress of February 16, 1925, made addresses before certain civic clubs and churches of that city on the subject of law enforcement; that in all these addresses he told his audience, in substance, and through them the general public, that he intended to bear down with heavy hands on all offenders against Federal Criminal laws; and that during the course of his address before one of said clubs, namely, the Kiwanis Club, on or about the 13th day of April, 1925, he stated that the higher the law violator’s collar and the whiter his shirt the longer his sentence would be in this court, and that the longer his list of witnesses the heavier his sentence would be.

“The defendants further state that the Hon. R. L. Williams was the Presiding Judge on the first trial of this case at Hugo, Oklahoma, beginning May 16, 1925, and ending on the 27th day of May, 1925; that the jury on said first trial was unable to reach an agreement after being out approximately thirty-four hours, and the jury was discharged and a mistrial declared; that the Hon. Franklin E. Kennamer was the Presiding Judge on the second trial of this case at Muskogee, Oklahoma, beginning July 20, 1925, and ending July 28th, 1925. They further state on information and belief that on the first trial the jury was nearly evenly divided; that on the second trial the jury stood ten to two for conviction on the first count, and on all other counts in the indictment the standing of the jury ranged from nine to three down to seven to five in favor of conviction; that prior to the commencement of said second trial the Hon. R. L. Williams, who is judge of the United States District Court for the Eastern District of Oklahoma, tendered the Hon. Franklin E. Kennamer the use of his chambers in the Federal Building at Muskogee, Oklahoma, during the trial of this cause, but that the Hon. Franklin E. Kennamer declined to use same, saying that he preferred to use the United States District Attorney’s office as his chamber, and that he did throughout said trial use the District Attorney’s office in the Federal Building at Muskogee, Oklahoma, as his chambers; that he associated in public and in private throughout said trial with Nugent Dodds, Mr. Frank Lee, Mr. John M. Goldsberry and Joseph A. Genau, Mr. Dodds being an Assistant United States Attorney General assigned to the prosecution of this case, Mr. Frank Lee being the United States District Attorney for the Eastern District of Oklahoma, Mr. John M. Goldsberry being the United States District Attorney for the Northern District of Oklahoma,

who had been invited to, and did, assist in the prosecution of this case, both at Hugo and at Muskogee, and Mr. Joseph A. Genau being the special accountant out of the Department of Justice assigned to said case and who worked up the evidence in the case and who was one of the Government's chief witnesses on the trial; that Judge Kennamer during said trial frequently walked from the Federal Building to the Severs Hotel, where he was stopping during the trial, and from the Severs Hotel to the Federal Building with one or more of the government's attorneys, and frequently ate his meals at said hotel and at the Red Arrow Cafeteria with one or more of the Government's attorneys; that Judge Kennamer frequently from time to time held private conferences with the Government's attorneys in regard to said case, both in the District Attorney's office and in their rooms at the hotel, and that he and attorneys Dodds and Goldsberry visited with each other in their rooms at the hotel far into the night; that Judge Kennamer prepared his instructions in said case in the office of the District Attorney with the counsel and advice of said Government attorneys, without the presence or consent of the defendants or any of their counsel; that Judge Kennamer's association with the Government's attorneys during the trial of said cause was so pronounced that it created unfavorable comment on the part of many people.

"Defendants further state on information and belief that on Sunday, July 26, 1925, Judge Kennamer said to Cal Wheeler, a deputy clerk in this court, that 'if the defendants are innocent in this case then that boy I sentenced to a year and a half in the Federal Penitentiary from Ada ought to be brought back from the penitentiary and given one thousand dollars to boot.'

“The defendants further state that on Monday morning, July 27th, 1925, at about nine O’clock, the jury was brought in and the foreman asked by the court if he had any report to make, whereupon the foreman said that the jury was unable to agree, and the court gave the jury further instructions over the defendants’ objection, although the foreman stated that they did not want any further instructions from the court; and shortly before noon of the same day the jury again reported that it was unable to agree and was sent back for further deliberation by the court; at about four O’clock in the afternoon of the same day the jury again reported that it could not agree and the court gave the jury further instructions. Just before six o’clock P. M. of the same day the jury was called into the court room to be sent out for supper, and the court observed one of the jurors, E. A. Edmondson, and one of the defendants, William Lloyd Lewis, smile at each other one time, and in open court in the presence of the jury severely censured the juror and told him his conduct was in contempt of court, and then sent the jury out for further consideration of their verdict, and after the jury had retired the court said to Mr. Lewis in open court that he would take the matter up between him and Mr. Edmondson in the morning. On the following morning at about nine o’clock, July 28, 1925, the court called the jury in and upon being advised by the foreman in response to his question that the jury was unable to reach a verdict, discharged the jury from further consideration of the case, and ordered juror Edmondson and defendant William Lloyd Lewis into the custody of the United States Marshal pending the hearing of contempt charges against them. The Court then ordered all the jurors except Mr. Edmondson to go back to the United States District

Attorney's office for the purpose of an investigation, and the jurors were there questioned with reference to what juror Edmondson had said and done in the jury room, and as to how the jury voted on the different counts of the indictment; that the jurors were then brought back into the court room and several of them placed upon the witness stand, after being sworn, and were questioned by the United States District Attorney and by the court relative to the conduct of juror Edmondson and other jurors during the deliberations of the jury in the jury-room. Upon the conclusion of said contempt hearing the court assessed a fine of five hundred dollars against the juror Edmondson and against the defendant William Lloyd Lewis and committed them to the custody of the marshal until said fines were paid. That Judge Kennamer said from the bench before passing sentence on the juror Edmondson and the defendant William Lloyd Lewis that: 'I am thoroughly convinced from the statements of the juror, Paul Harris, and one other juror whose name I do not recall at this time, in view of the overwhelming testimony introduced in this case, I might say testimony from witnesses whose reputation for truth and veracity is not challenged, the undisputed testimony of the records themselves, and the law as the court instructed the jury, that there has been a gross miscarriage of justice in this case, and that Mr. Edmondson is wholly responsible for it.' Whereas in truth and in fact two jurors voted not guilty on the first count of the indictment and the jurors stood on the other counts of the indictment submitted to them in the ratio of from nine to three down to seven to five in favor of conviction; that juror Edmondson and juror Couch voted not guilty on every count in the indictment submitted to them.



“The court further said at that time :

‘The government has brought witnesses from foreign states, they have brought numerous witnesses, they have testified in the case. On many material and essential issues involved there was not any evidence arising to the dignity of testimony that contradicted their statements, still, the case is undecided, simply in my judgment, because a juror did violence to his oath.’

“The court also said at the same time in the same connection :

‘A single act of the nature committed by the juror would be enough to warrant the court in concluding the trial at the time such act was observed, with the consequent great public inconvenience and expense incident to a re-trial of the cause. Any continuous course of conduct, such as the Court has himself observed, is so intolerable as to merit severe punishment in order that there may be no probable repetition thereof by this juror or by others upon whom the solemn obligation of a juror’s oath may rest so lightly.’

“The Court also said at the same time and in the same connection that he thought when leaving the court room on the night of July 27, 1925, that one year and one day in the penitentiary would be a very lenient sentence under the circumstances, and that he had his mind fully made up to fix a penitentiary sentence in punishment of the contempt; that the court did on the afternoon of July 28, 1925, announce that he would fix the punishment for juror Edmondson and defendant William Lloyd Lewis at sixty days in the city jail at Muskogee, Oklahoma, but before passing the sentence was advised that juror Edmondson’s wife was ill and reduced the sentence to a fine of five hundred dollars each against both the juror Edmondson



and defendant William Lloyd Lewis. That after the court had indicated that he would sentence the juror Edmondson and defendant William Lloyd Lewis to imprisonment in the city jail of Muskogee, Oklahoma, for sixty days each, the court refused to allow an appeal to the Circuit Court of Appeals and refused to allow time to prepare and file a bill of exceptions, and refused to allow time in which to prepare and file a transcript of the record, and refused to allow bail pending the appeal, and announced that there was no appeal allowable for a conviction for direct contempt, and that any relief from the Court's sentence would have to be had from the Circuit Court of Appeals.

"These defendants state that Judge Kennamer was extremely angry and incensed at the defendants, and himself said immediately before passing sentence in the contempt proceedings that he was very mad when he observed what he denominated a signal conversation between the juror Edmondson and defendant William Lloyd Lewis, and lost his patience right there and then; that the intense ill feeling of Judge Kennamer toward the defendants was evidenced also by his manner and conduct and facial appearance during the contempt proceedings, and these defendants state that they believe and therefore charge that Judge Kennamer's intense anger toward the defendant William Lloyd Lewis continues yet without abatement and has extended to and included defendant Allie E. Lewis, and that by reason of this intense anger Judge Kennamer is utterly unable to give the defendants or either of them a fair and impartial trial in this case. These defendants further state that they demeaned themselves properly throughout the trial of this case and gave the court no cause to charge either of them with misconduct or to charge the defendant

William Lloyd Lewis with engaging in a signal conversation with the juror Edmondson, and gave the court no cause to assess a fine of five hundred dollars against them for contempt of court, or to charge him with contempt of court; that on the trial of the contempt proceedings the juror Edmondson and defendant William Lloyd Lewis each testified that they were not signalling to each other at all, but that they only smiled at each other, and then it was merely in salutation, and without any ulterior motive and done innocently.

“The defendants further state that on the 16th day of July, 1925, Judge Kennamer called a special term of the United States District Court for the Eastern District of Oklahoma at Muskogee, Oklahoma, beginning July 20, 1925, for the purpose of trying this cause and certain other cases against these defendants; that said trial continued continuously from July 20, until July 28, 1925; that on the 28th day of July, 1925, the court discharged the jury in this cause and announced from the bench that neither this cause nor either of the other cases pending against these defendants would be tried immediately, and Mr. Dodds and Mr. Lee both in open court announced that the cases would be later set and the defendants given ample time to prepare for trial; that thereupon the defendant William Lloyd Lewis, believing said cases would not be reset until this fall, proceeded to Ashville, North Carolina, where his children are, one of whom is sick and afflicted with a severe case of asthma, and was in Ashville, North Carolina, on the 1st day of August, 1925, when the court, without the defendants' consent and over their protest through their counsel of record, set this case and the other cases against these defendants for trial on the 10th day of August, 1925. The defendants' counsel were

advised by Mr. Dodds by telephone on the afternoon of July 31, 1925, that he would move the court on August 1, 1925, at ten o'clock A. M., at Muskogee, to reset this case and the other cases against these defendants, but did not indicate what date he would ask for them to be reset; that defendants' counsel and defendant A. E. Lewis proceeded to Muskogee on the morning of August 1st, 1925, and appeared in court at ten o'clock; that Mr. Dodds asked in open court that all of these cases be assigned for trial on the 10th day of August, 1925; that defendants' counsel objected and protested against the setting of these cases at said time, but the court overruled his objections and protests and ordered the cases set for trial on August 10th, 1925, and ordered a jury of sixty men drawn from the jury box as a petit jury panel for the trial of said cases; that the defendant Allie E. Lewis and defendants' counsel R. L. Davidson were present at the drawing of said jury and immediately thereafter proceeded to the telegraph office and wired defendant William Lloyd Lewis at Ashville, North Carolina, to return immediately; that the said William Lloyd Lewis proceeded by the first train after receiving said telegram to return and reached Tulsa, Oklahoma, on Tuesday morning, August 4th, 1925; and that to-day, August 4th, 1925, is the earliest date possible upon which the defendants could make a file this affidavit.

"That shortly after the drawing of the panel of sixty names from the jury box on August 1, 1925, and without the presence of either of the defendants in court and without the presence of any of their counsel, the court of its own motion quashed said jury panel and ordered a panel of sixty jurors to be drawn from that part of the Eastern District of Oklahoma composed of the counties of Muskogee,

Okmulgee, Wagoner, Haskell, Cherokee, McIntosh, Coal, Atoka, Marshall, Choctaw, Adair, Sequoyah, Hughes, Pittsburg, Lattimer, LeFlore, Pontotoc, Johnson, Bryan, McCurtain and Pushmataha; that under said order nine counties of the present Eastern District of Oklahoma are excluded as well as the ten counties formerly belonging to the old Eastern District of Oklahoma, which are now a part of the Northern District of Oklahoma; that on the former trial of cause No. 8622 the court of its own motion quashed the first panel of forty names drawn and ordered the drawing of a second panel of forty names from the entire body of the present Eastern District of Oklahoma; that the court in its investigation and hearing of the contempt charges in case No. 8622, Judge Kennamer and the United States District Attorney questioned the jurors as to alleged statements made by juror Edmondson during the deliberations of the jury in regard to following the court's instructions, and Judge Kennamer instructed the jury in that case shortly before he censured juror Edmondson in the presence of the jury for the alleged smiling between the juror Edmondson and the defendant William Lloyd Lewis, that it was their duty to follow the instructions of the court, right or wrong; that if the court was wrong there were higher courts to correct him; that the proceedings in the contempt hearings in case No. 8622 and the attitude of Judge Kennamer in regard thereto and his statements from the bench will tend to destroy the independence of the individual juror's own convictions and will prevent the defendant from having a fair and impartial verdict of the jury.

“Defendants further state that juror Edmondson was not a member of the regular panel of jurors

drawn from the jury box; that when the regular panel of jurors drawn from the jury box was exhausted in selecting the jury in cause No. 8622, the court ordered the marshal to summon nine talesmen to report back in court within one hour; that the defendants objected and protested against completing the jury from talesmen and insisted that the additional jurors should be drawn from the jury box. The Government's attorneys objected to drawing the additional jurors from the jury box and insisted upon an open venire being issued for the additional nine prospective jurors; the defendants objected and excepted to the court's ruling in refusing to draw the additional jurors from the box and ordering them summoned as stated; that juror Edmondson was one of the nine talesmen so summoned from the City of Muskogee; that said nine talesmen reported in the court within an hour from the time the order was made; that the jury was completed on the same day the talesmen were summoned, and within a very short time after they had reported in court and the jury was under orders of the court kept together and placed in charge of two bailiffs, specially sworn for that purpose; that no one connected with the defense side of said cause ever communicated directly or indirectly in any way with juror Edmondson or juror Couch or with any other juror before they were accepted as jurors to try the case, or after.

"ALLIE E. LEWIS.

"WILLIAM LLOYD LEWIS."

[Jurat.]



3. *U. S. v. Lawson*, U. S. D. C., D. of Col. (unreported):

INDICTMENT.

“The Grand Jury Charges:

“Pursuant to Public Law No. 601, Section 121, of the 79th Congress (Ch. 753—2d Session), and house Resolution 5 of the House of Representatives of the United States, 80th Congress, dated January 3, 1947, the House of Representatives was empowered to and did create the Committee on Un-American Activities, having duties and powers as set forth in said Public Law.

“John Howard Lawson, having been summoned as a witness by the authority of the House of Representatives of the United States to give testimony upon a matter under inquiry before the Committee on Un-American Activities of the said House of Representatives, and having appeared before the said Committee at its session within the District of Columbia on October 27, 1947, refused to answer a question put to him by the Committee, namely, whether or not he was or had ever been a member of the Communist Party, which question was a question pertinent to the question under inquiry.”

EXCERPTS FROM THE CHARGE TO THE JURY.

“The Court (Curran, J.):

“The Court instructs you as a matter of law that the Committee on Un-American Activities of the House of Representatives was a validly constituted committee of the Congress. Public Law 601 provides that the committee may act as a whole committee or a subcommittee.

\* \* \* \* \*

“You will recall that the testimony tended to show that the committee was investigating the infiltration



of communism in the motion picture industry, and that the question propounded was whether or not the defendant was or had been a member of the Communist Party. For that reason the Court has determined that the question was pertinent to the inquiry; that it was a proper question for the committee to ask the defendant; and that it was the defendant's duty to answer."

"The defendant takes the position, through his counsel, in arguing the case to you, from the evidence submitted by the Government and the transcript of the case, that he was attempting to answer the question; and, two, that he did answer the question and that he was not guilty of a refusal. Now, the court has instructed you as to what the meaning of the word wilful in connection with this prosecution is; and so a person who declines to comply with the direction of the committee, on the basis of the claim that the committee is invalid or it is exceeding its jurisdiction, or that the request is unreasonable, or that it was outside the scope of the investigation, or that the committee was not investigating communism, in so refusing to answer a question acts at his own peril. The issue is clear in this case, ladies and gentlemen, and you are to decide it from the evidence as you have heard it from the witness stand.

"If you believe, and believe beyond a reasonable doubt, that the defendant appeared before the committee—and that is not controverted by the defense—that he was sworn—and that is not controverted—and that he was asked some questions—and that is not controverted—and that he refused to answer questions, it is your duty under the law to return a verdict of guilty.

\* \* \* \* \*

“You will recall that the defendant was asked, ‘Are you now, or have you ever been a member of the Communist Party of the United States?’

“And he made a certain answer which he started by saying, ‘In framing my answer to that question I must emphasize the points that I have raised before.’

“The second question: ‘Mr. Lawson, the most pertinent question that we can ask is whether or not you have ever been a member of the Communist Party. Now, do you care to answer that question?’

“The defendant said: ‘You are using the old technique, which was used in Hitler Germany in order to create a scare here—’

“The third question: ‘Are you a member of the Communist Party, or have you ever been a member of the Communist Party?’

“To which Mr. Lawson replied: ‘It is unfortunate and tragic that I have to teach this committee the basic principals of American—’

“The fourth question: ‘That is not the question. That is not the question. The question is: Have you ever been a member of the Communist Party?’

“To which the defendant said: ‘I am framing my answer in the only way in which any American citizen can frame his answer to a question which absolutely invades his rights.’

“Now, in testing whether or not you believe from the evidence that the defendant answered the question propounded by the committee, you must decide for yourself whether or not the answers given by the defendant to the question satisfy you now as to whether or not he ever was or is a member of the Communist Party. If you can come to a conclusion by the replies the defendant gave to those questions—if you can answer by those replies—as to whether or

not he ever was or is now a member of the Communist Party, then, of course, it is your duty to return a verdict of not guilty. If you cannot, you must return a verdict of guilty.”

4. *U. S. v. Trumbo*, U. S. D. C., D. of Col. (unreported):

INDICTMENT.

“Pursuant to Public Law No. 601, Section 121, of the 79th Congress (Ch. 753—2d Session), and House Resolution 5 of the House of Representatives of the United States, 80th Congress, dated January 3, 1947, the House of Representatives was empowered to and did create the Committee on Un-American Activities, having duties and powers as set forth in said Public Law.

“Dalton Trumbo, having been summoned as a witness by the authority of the House of Representatives of the United States to give testimony upon a matter under inquiry before the Committee on Un-American Activities of the said House of Representatives, and having appeared before the said Committee at its session within the District of Columbia on October 28, 1947, refused to answer a question put to him by the Committee, namely, whether or not he was a member of the Screen Writers Guild, which question was a question pertinent to the question under inquiry. Second Count:

“The Grand Jury incorporates herein the first paragraph of Count One.

“Dalton Trumbo, having been summoned as a witness by the authority of the House of Representatives of the United States to give testimony upon a matter under inquiry before the Committee on Un-American Activities of the said House of Representatives, and

having appeared before the said Committee at its session within the District of Columbia on October 28, 1947, refused to answer a question put to him by the Committee, namely, whether or not he was or had ever been a member of the Communist Party, which question was a question pertinent to the question under inquiry."

EXCERPTS FROM THE CHARGE TO THE JURY.

"The Court (Pine, J.) :

"I should say to you that Congress has power to conduct investigations, in order to secure information needed by Congress in connection with the enactment of legislation. Such investigations may be conducted by Congress through its committees or subcommittees.

"Pursuant to this Public Law 601 of the Seventy-ninth Congress, which is known as the Legislative Reorganization Act, and House Resolution 5, which has been received in evidence, Congress created the Committee on Un-American Activities, authorizing it as a whole or by subcommittee to make investigations of the extent, character, and objects of un-American propaganda activities in the United States, the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and all other questions in relation thereto that would aid Congress in any necessary remedial legislation."

\* \* \* \* \*

"You will note that each count of the indictment alleges that the question was a question pertinent to the matter under inquiry. You will not concern yourself with this allegation, as it involves a matter of law which it is the Court's duty to determine and

which has been determined. I have determined as a matter of law that the committee had the right to ask these questions and that the defendant had the duty to answer these questions.”

\* \* \* \* \*

“The record also discloses, as I recall it, that the defendant made certain statements after the questions involved in this case were asked. So you do not have a case of a witness who stands mute and makes no statement when a question is asked. However, a witness may refuse to answer a question, which is the charge in this case, by other means than by merely standing mute.

“An answer means a responsive reply; it does not mean any kind of reply that a person desires to give. So a witness may refuse to answer by making an unresponsive reply or statement when he does so not accidentally but intentionally, knowingly, with full understanding of the question, and after being given a reasonable opportunity to answer responsively. His motives, as distinguished from his intent, in making the statements may not be considered.

“So in determining whether the defendant refused to answer the questions which are here involved, you should consider what took place and what was said, as that has been read to you from the record, the clarity or lack of clarity of the questions asked, and defendant’s ability or lack of ability to understand the questions asked, the opportunity or lack of opportunity to answer responsively, having in mind that it is not necessary to ask a question over and over again after there has been a reasonable opportunity to answer responsively, and all the surrounding facts and circumstances; and from this all other pertinent evidence, determine whether this defendant refused to



answer either or both of the questions put to him, under the definition I have given you.

“I might state that the defendant had the right—I instruct you that the defendant had the right—to state and make known to the subcommittee any objections he might have to answering questions, but did not have the right to do more than to state and make known his objections. He did not have the right to insist upon any elaboration of his objections or repeatedly to state his objections instead of answering the questions.”

#### IV.

### **Specimens of Editorials Contained in Defendant's Exhibits “G” and “H.”**

Texarkana, Ark., Gazette, Nov. 24, 1947:

#### **TRAITORS IN THE FILMS.**

Every member of the Communist party is an enemy of America. There is no doubt about that. And Communists in America are seeking to bring about the downfall of this country, just as they are seeking to bring about the downfall of a large number of countries in Europe.

The most recent and dangerous Communistic activity in this country was brought to light in the Thomas committee's probe of Un-American activities in the moving picture industry. The films form the most popular medium of amusement in America. Men, women and impressionable children see them. No greater appeal to human emotions and sensibilities can be imagined.

Filmland delighted the Communists as a soil admirably adapted to the spread of their doctrine. They have been at work for some time. Paul V. McNutt, an eminent attorney and political leader, has been retained apparently to assist Eric Johnston to cover Communistic propa-



ganda in the films. Wendell Willkie apparently was employed for the same purpose some years ago.

A great publicity campaign is being carried on by actors, actresses, screen writers, directors, Johnston and McNutt to delude the American people and to threaten the members of the Thomas committee and others, who are asking only a simple question: Are you a Communist? Evidently these people prefer a citation for contempt rather than to tell their true names and to answer whether or not they are Communists, points out George E. Sokolsky in his syndicated column.

An honest man does not hesitate to make public his correct name, address, religious, political and fraternal affiliations, and to do so under oath. The only ones who dare not take such an oath are those who fear the charge of perjury and its consequences. Therefore, it seems clear to us that those Hollywood people who howl freedom of thought and speech, but who refuse to answer honest questions before a committee representing the people of their country, are not honest American citizens and the implication is apparent that they are Communists or "fellow travelers."

The American people will welcome whatever facts can be brought to the surface, so that they may be safeguarded against the forces that wrecked and ruined country after country in Europe. If the Thomas committee proves that the movies have not been used corruptly, then that is to the credit of the motion picture industry. If it is proved otherwise, then the people should know and should know who the offending actors, directors, script writers and others in the film industry were or are. We do not have to declare war to catch traitors.

Bridgeport, Conn., Telegram, Oct. 30, 1947:

### COMRADES IN HOLLYWOOD.

In this free country it is most difficult to understand why anyone in his right mind would want to be a communist. Communism thrives on spreading suffering and misery until free people, either through desperation or by force, accept the "fuller and richer life" promised by those who have never even tasted of a full or a rich life.

It is beyond our understanding why anyone should prefer hunger, cold, labor slavery, poverty, sickness and slow death—which is what the people get from their communist rulers—in preference to the full life and happiness of free America.

But, in this country, if a person wishes to be a communist, a believer in the morbid existence that communism offers, he may be one. He can speak or write about communism, can address public meetings or use the government mail service to spread his subversive doctrines. Native communists and imported ones like Eisler can hire halls and receive police protection during meetings even though they are obviously against the public interest.

In Washington the House Committee on un-American Activities is probing the extent of communist infiltration in Hollywood. It is merely trying to show the American people how far these comrades have wormed their way into the motion picture industry. The committee is doing nothing to infringe upon producers', writers' or actors' civil liberties, nor is it making anyone's personal beliefs a test of employment. The committee is making no attempt to abridge any of the "rights" of communists in this free land.

Despite all the noisy criticism of commies and their friends that the rights of a free press and speech and

radio are imperiled, that the Bill of Rights is being trampled upon, etc., etc., the Committee has clearly shown that there are scores of people in the so-called movie capital who seek to foist the "fuller and richer life" upon Americans by plugging the party line in films, and in a manner which they could not possibly do openly.

The finger is on them, and they know it. They have sneaked into jobs, key spots in the industry, and for all we know, may be taking orders direct from a foreign power. It is obvious from the start that they seek through the screen to influence the beliefs and the morals of the American people. Although they may not have been too successful, the public's interest and right to know what they are doing, is not lessened.

The Hollywood people have made a ridiculous defense, and the screaming of those who refused to admit their affiliation with the communist party, has caused great damage to the motion picture industry in this country. Even though reams of publicity are being created in Washington, which is supposed to be the life blood of the industry, it is not good publicity. It is the sort that undermines the faith of the people in a legitimate American activity.

Since it is no crime to be a communist, we can find at least a modicum of respect for one who is willing to stand up and be counted, but none, not even a grain of respect, for those who hide themselves under the cloak of respectability, yet carry on in secret the sabotage of decent Americanism.

Rockville, Conn., Rockville Leader, November 13, 1947:

### THE HOLLYWOOD INVESTIGATION.

The investigation into Communist activities in Hollywood was on the whole hardly an edifying spectacle. Several facts have emerged however, which cannot be disputed: there are Communists connected with the motion picture industry; these Communists have attempted to inject the party line into pictures; to date these attempts have been thwarted by the industry itself.

Certainly it is difficult to imagine any place where Communist propaganda could do more harm than in motion pictures which are seen by millions of people of all ages. Educators are agreed on the value of visual aids in teaching, and the Communist party line, injected into films, would have an insidious effect. The fact that such propaganda has been kept out of pictures speaks well for the ability of the industry to police itself.

Whatever may be one's opinion as to the tactics employed by members of the investigating committee, and much could be said on this matter, anyone who believes in the American form of government cannot fail to be disgusted with those screen writers who refused to give a straightforward "yes" or "no" to the question as to whether or not they are or have been members of the Communist party. Any real American should be glad to answer with an emphatic "no". Refusal to do so has laid these individuals open to the suspicion that they actually are Communists. Had they answered "yes" one could have respected their willingness to stand up for their convictions while abhorring their beliefs.

The most sensible statement was made by Eric Johnston, spokesman for the motion picture industry. Mr. Johnston said that he would welcome an investigation of

Communism in the movies provided it followed court procedure where the accused had an opportunity to defend themselves against any irresponsible charges. He also expressed himself as being strongly opposed to government censorship. Until the industry shows that it is powerless to censor itself, most people will agree with Mr. Johnston. Political censorship can lead to as great evils as those which it censors.

Frankly, it seems a little ridiculous to hound Communists and still allow the Communist party to exist. J. Edgar Hoover, head of the FBI, has opposed outlawing the party on the grounds that such action would only drive the Communists underground where it would be more difficult to keep track of them. Mr. Hoover unquestionably knows more about the problem than most people, but it is a question that deserves serious consideration. It seems increasingly to be less a legitimate political party than a group which desires to overthrow the government by force and takes its orders from a power outside the United States. As such, it hardly seems to deserve a place on the ballot.

Columbus, Georgia, The Columbus Ledger :

WHAT IS THIS "FREEDOM"?

Those Hollywood people who seek to wrap themselves in the American flag in order to hide their Communist affiliations have a little of the appearance of trapped rats as they snarl and heckle the Congressional committee which is seeking to disclose "red" infiltrations.

Ordinarily, we believe we are as devoted to "civil liberty" as anybody. Ordinarily, we would agree with the contention that a man's political conscience is his own affair.

*But there are some men and women who do not—  
and in the nature of their vocations cannot—lead*



*“private” lives. Public office holders cannot claim total privacy of thought and action. Neither can those who write books or, for that matter, those who edit magazines or newspapers. And neither can those who make the nation’s motion pictures.*

Such men and women sacrifice a good deal of their privacy simply because they have elected—and it is wholly a matter of their own free choice—to follow callings which have such an obvious impact in shaping public opinion that the masses of the people have special prerogatives when it comes to inquiring about their political beliefs.

The people, in a word, *have a right to know* what makes such men and women “tick.”

They have a right to ask whether they be Democrats, Republicans, Socialists or Communists—or whether they have any political belief at all. Otherwise they cannot judge with certainty what shapes the opinions and the philosophies which are daily being expounded.

In a very special sense, Hollywood scenarists are not entitled to complete privacy in their political lives, because they wield an extraordinarily potent weapon of propaganda, readily susceptible of *secret perversion*.

And this, indeed, is what is charged against the Hollywood writers! They are not alleged to have operated as Communist propaganda openly—as is done, for example, by *The Daily Worker*, the officially recognized organ of the Communist party in the USA.

*They are charged, rather, with having operated the Communist propaganda surreptitiously—with “feeding” the Moscow “line” into films supposedly designed for entertainment only. And it is supremely*



*important for the American people to know if this charge is true or false.*

We have, therefore, little patience for, and no sympathy with, those men and women who prepare the nation's movie scripts, but who won't say—when haled before the bar of public opinion—just where their political loyalties really lie.

If they are not Communists, they should not hesitate to say so, and they should not resent being asked.

If they are Communists, not only the public but the producers of motion pictures have a right to know it.

In all such matters, fair-minded people ought to ask themselves: "What is freedom, really?"

If we may give our own answer to that question, we would have to say that freedom is *not* the right to wrap oneself in the American flag whilst serving, surreptitiously, the policies and ideologies of a foreign power.

It is not the right to pollute the nation's intellectual stream—its books, its periodicals and its motion pictures—with any dangerous "ism" injected by subterfuge.

And it is not the right to refuse to answer honest questions honestly.

*As regards Communism, it is no longer possible to view it as simply another political party, operating sincerely within the free American political system. It must now be viewed, rather, as a formidable international conspiracy, managed from abroad and with the avowed objective of destroying the American idea.*

Thus any legally-constituted Committee of Congress has a right and duty to inquire of any man in public life (and Hollywood scenarists *are in* public life) whether

they be Communists. Such inquiries have, unhappily, become necessary in order to protect the national security, and if they represent the beginnings of American "concentration camps"—so be it.

Maybe, indeed, that is where we ought to put all the Communists, and let them stay there until they rot.

Decatur, Ill., Review, Nov. 22, 1947:

#### HURT FILM INDUSTRY.

Hollywood is alive to the fact that the ten men connected with the motion picture industry who refused to answer questions before the House un-American activities committee have cast a shadow over the industry. Eric Johnston, president of the Motion Picture Association of America, says they did "a tremendous disservice."

Citation of the ten men for contempt has been approved by the full committee of the House and the House probably will pass on the charge next week. The men refused to answer on constitutional grounds which may be their right, but in refusing to answer the general public did not follow the technical point made, which must be determined by a court, but read only that the men refused to say where they stood.

In this country a man is considered innocent until he is proven guilty but when he refuses to answer questions the public jumps to the conclusion that he has something to hide. Refusal to talk added to the fire of suspicion that perhaps there is something wrong in Hollywood.

The film industry denies the charges hurled at it by the House committee but the refusal of the ten men to talk has not helped the industry defense and it is not likely that the industry will come to the defense of the ten men who Mr. Johnston says "have done a tremendous dis-

service to the industry which has given them so much in material rewards and an opportunity to exercise their talents.”

New Orleans, La., States, Nov. 28, 1947:

#### HOLLYWOOD DECISION.

To sever a worker from his bread and butter under circumstances that might make it difficult for him to make another suitable connection is not a matter to be passed off lightly. Hollywood movie executives must have sensed this when they held a two-day closed meeting to decide the fate of 10 figures cited for contempt of Congress. It was not easy, obviously, to reach a decision.

But the film writers implicated brought their predicament upon themselves. They insisted on keeping secret the matter of their membership or party-line affiliation with the Communist party. Mere membership in the Communist party is less repulsive to the American public, we are inclined to believe, than the snakiness of Commy methods and activities. Our people want all political activities conducted opening and above board. This is the traditional American way. Any other system, is Ku Kluxism and when that erupted a few years ago, public sentiment and public action put a foot down promptly and impressively.

It is snaky and contemptible and base to be secretly a member of the Communist party, then pretend not to be or to be something else. It is plain political treachery. It is thumbing the nose at American ideals and traditions. Let the Commies do as other political groups do—openly and honestly proclaim their affiliations, alliances, doctrines, objectives and loyalties. Then public opinion could deal with them—in the American way.

Lewiston, Me., Sun, Oct. 28, 1947:

NO CAUSE FOR EVASION.

The House Un-American Activities Committee probe of Hollywood for possible subversive activity gains more and more attention as it goes along. After several days testimony last week by "friendly" witnesses—those willing to make allegations of Communist activity in the movie colony—the committee ran into opposition yesterday.

In a turbulent forenoon session, a screen writer, John Howard Lawson, was put on the stand. Evidence was given to the effect that he had held a Communist party card several years ago. Then he was asked the plain question whether he is, or ever was, a Communist. He refused to answer, and the committee voted to cite him for contempt of Congress.

Lawson claimed that the committee had no right to question anyone as to their political beliefs. But the courts have frequently held that these congressional committees have very wide powers, as some of the nation's big financiers found out 11 or 12 years ago when Wall Street was the target. What we have cautioned against more than once is the misuse of congressional investigatory powers, and the committee will earn more confidence from American citizens, if it discards all hearsay evidence and sticks to proven facts.

\* \* \*

Getting back to Lawson's refusal to answer, we think he should have replied to the committee's question. If he is not a Communist, and never was one, there is no reason why he could not have answered in the negative. If he is a Communist, or has belonged to the party, that is admittedly an unpopular admission to make at this time.

But we have quite a few people in this country who are enough different from their fellows as to be conspicuous in their beliefs or their way of life. Some think nudism is all right, and they are frequently made fun of as a result. Some hold to odd religious beliefs, others are vegetarians and firmly refused to eat meat. The price they all pay for non-conformity is a degree of public notoriety, and those who are sincere must put up with it.

Perhaps we can put Communists in this class, and leaving aside the question of whether or not they are working for violent overthrow of the government, their membership in the party inevitably singles them out. There is no law against being a Communist here, any more than there is against being a vegetarian or a sun-worshipper. But the very fact of refusing to admit or deny it, before a congressional committee, multiplies public suspicion. They should answer yes or no, and if in the affirmative, follow up by asking the Congressmen what they are going to do about it. Because there just isn't anything Congress can do.

Haverhill, Mass., The Haverhill Gazette, Oct. 30, 1947:

#### BEYOND COMPREHENSION.

Why an American should refuse to put his political affiliation officially on record is something quite beyond our comprehension.

Such refusal, however, has become common since agencies of government began to search out Communist influence in American life.

Some trade union leaders have chosen to be insulted by the idea anybody should ask whether they are Communists.



Now we have Hollywood personalities refusing to answer a congressional committee's questions as to their political affiliations.

Communism is an aggressive force obviously striving to destroy every American institution and to level every American standard.

This is a proposition that needs no more demonstration than the proposition that a thief in the house is a bad man to have around.

Obviously, therefore, the government that tries to root Communism out of the life of the country is acting with the wisdom of the householder who calls the police when he suspects the presence of a thief.

When an agency of government turned toward Hollywood in its search for Communism, it acted wisely.

Motion pictures are perhaps the most powerful propaganda force in the world. If no Communist agents had got into the movie industry, it would be a strange situation indeed.

The congressional committee had impressive evidence from important figures in the industry, that Communists are doing their evil work in Hollywood. The committee logically followed this evidence with subpoenas to some of the suspected persons.

One suspected person after another refused to answer the committee's question on the ground that asking their political affiliation was an improper invasion of their privacy.

This is a flimsy refuge from an accusing force.

In the minds of the people, we think, these screen persons, by their refusal to co-operate with the committee perhaps unjustly, have condemned themselves.

Detroit, Mich. Detroit Free-Press, Oct. 28, 1947:

MOST UN-AMERICAN OF ALL  
THE COMMITTEE.

The most un-American activity in the United States today is the conduct of the Congressional Committee on Un-American Activities.

It is so viciously flagrant a violation of every element of common decency usually associated with human liberty that it is foul mockery on all that Jefferson and Lincoln made articulate in their dreams of a cleaner and finer order on earth.

The hypocritically named "committee on Un-American Activities" should be abolished at the earliest possible moment by the United States Congress and so deeply buried that no other group of publicity-mad zealots could ever again be allowed to tarnish with their stench the greatest institution of our democracy, our halls of legislation.

This Committee is possessed by a denial of human freedom generally associated with the Directorate in the French Reign of Terror, with the Soviet mass slaughter trials, and the Hitlerian blood purges.

No wonder that Stalin, Molotov, Vishinsky and others of that breed [sentence missing] good names for the sheer sadistic glee of getting headlines should be allowed to exist.

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This newspaper has no defense to make of many of the rotten conditions that exist in Hollywood. But we do applaud the courage of the motion picture actors and actresses and the others who work in the films for fighting

against this latest outrage on the part of the fanatical witch hunters.

Paul V. McNutt, their counsel, has demanded that the Committee furnish proof of its blanket accusations of Communism against the industry.

This is an astounding development for these Congressionally protected slanderers.

"Look," they must say in amazement, "our victims are asking us to produce evidence of our charges! How absurd! We never prove our accusations. Our job is merely to smear."

The greatest single weapon within the power of our Government is the power of inquiry so that democracy shall always be cleansed before the eyes of the sovereign people. So vital is it that it should forever be safeguarded as sacred and held inviolate.

But the "Un-American Committee" has prostituted that great function and has dragged down with it to the gutters our great Palladium of human liberty.

Let Congress abolish this smear gang.

Such inquisitions belong to the dark ages of the New Deal.

Grand Rapids, Mich. Grand Rapids Press, Dec. 1, 1947:

#### RED CLOUD OVER HOLLYWOOD.

The motion picture industry, obviously gravely concerned over the bad publicity it has been receiving lately as the result of the congressional inquiry on Communism, has fired the 10 employes cited for contempt by the Thomas committee and barred Communists from its pay rolls.

While some may contend that the industry was unduly hasty in dismissing the accused before anything actually had been proved against them, it isn't easy to defend the 10 men, since they did little or nothing to defend themselves against the committee's charges and allegations. And even those persons who have been most critical of the committee's methods, or who have insisted that even a congressional committee has no right to pry into a man's political affairs, will find it difficult to blame the picture people for being jittery. They are in the business of selling a mass-communication product and, if they hope to stay in business, they must be unusually sensitive to the currents of public opinion.

There can be no doubt that the American people are concerned over possible Communist activities in their country and are likely to be suspicious of any industry charged with harboring Reds in influential positions. The case against the accused is not based on any claim that they succeeded in getting Communistic propaganda into their finished product—for they obviously didn't succeed in doing that—but is based on the belief that the nation can't be too careful in protecting itself against such a possibility.

The whole incident is particularly unfortunate because some of the men cited worked on some of the finest films of the last few years. But as a group they haven't done much to encourage sympathy for their cause. On the stand they put on a show with a script which sounded as if it had been written by Red propagandists, and in denouncing their dismissal they handed out some more of the same with the charge that their firing was only part of an "attempt to control films, books and science in order to facilitate the dissemination of anti-democratic, anti-Semitic, anti-Negro and war-inciting doctrine." Do they

expect the American people to believe that ridiculous charge or to accept it as proof of their loyalty to democratic principles?

Nesoho Mo., Democrat, Nov. 26, 1947:

### FUEL FOR HYSTERIA.

President Eric Johnston of the Motion Picture Association of America indicted 10 film writers and directors who refused to answer questions of the House Committee on Un-American Activities. He declared these men did a "tremendous disservice" to the industry. He thinks they should have stood up and been counted "for whatever they are." Mr. Johnston is perfectly right.

An array of circumstantial evidence was lodged against each of the 10. Refusal to answer the committee's question, "Are you a Communist?" left a smudge against the industry. Perhaps some were imbued with the esoteric conviction no one has the right to delve into Communist activity in the United States. The public conviction certainly is that these men balked at the query because they had something to conceal.

It is encouraging to find Mr. Johnston lashing out at such conduct and declaring again that Holloywood has no place for subversives. Perhaps, as he asserts, they fed the fires of hysteria and added to confusion. But the confusion is probably within the industry which doesn't know just what to do with them.

If these 10, or any of them, are Communists they had little alternative. They were forced to button up their testimony, face charges of perjury or by admitting Communist affiliation divorce themselves from cushy film jobs.



St. Louis, Mo., Post Dispatch, Oct. 30, 1947:

THEY WOULDN'T SAY "YES" OR "NO."

Apparently, J. Parnell Thomas is having some success in identifying Hollywood figures as Communists. Ten writers, producers and directors have been cited for contempt for refusing to give a "yes" or "no" answer to the question: "Are you a Communist?" Acting obviously under advice of counsel, the 10 men declined to answer on the ground that it is an improper question, or that they are protected by the Constitution from inquiry into their political beliefs.

It strikes us that the question is quite proper, and we know of nothing in the Constitution that is apropos. Surely, the witnesses cannot refer to that clause of the Constitution which protects a person from self-incrimination. If that clause, indeed, is the one they are invoking, it is an admission by the witnesses that they regard membership in the Communist party as a violation of penal law. That would be playing right into the hands of the committee, which is seeking, in fact, to outlaw the Communist party.

While the performance of the House Un-American Activities has fallen far short of ordinary standards of congressional dignity and has smacked of cheap melodrama, the behavior of the eight men cited for contempt is equally bad. If they are Communists—and the committee has introduced evidence to that effect—their refusal to admit it leaves a very bad taste in the mouth.

Usually men who belong to belligerent minorities or who espouse unpopular causes are happy and proud to make open avowals. These men are not in that mold. Instead, they hide themselves behind the Constitution

of the United States, the very document that Communism would destroy if it had the chance. It is a strange and depressing spectacle.

Newark Star-Ledger, Nov. 27, 1947:

### HOLLYWOOD GETS WISE.

The executives of the movie industry, meeting in New York, have decided to suspend immediately and without salary the 10 Hollywood personalities who have been cited for contempt of court by the House Committee on Un-American Activities. The film executives have also decided to discharge all Communists and to refuse to employ Communists, while at the same time taking care to guard against hasty and mistaken judgments of suspected persons.

This action by the film executives is to be applauded, although it is rather belated. More impressive would have been action by the industry immediately, when these 10 Hollywood personalities refused to state whether or not they were Communists.

The Communists and their misguided apologists have succeeded in distorting the issue, contending that the civil rights of the accused persons are at stake. This is a clever bit of obfuscation, since it is the civil rights of all the people that are at stake in the continuing conspiracy of the Communists to destroy our way of life.

The basic issue in the struggle over communism is civil rights. It is decidedly untrue that the basic issue is one of economic or social reform. The Communists contend in practice as well as in theory, that they cannot carry out their program without establishing a dictatorial government and suppressing the freedoms of those to communism.

Those who believe in civil rights thus have the duty of eliminating Communists from positions where they weaken our democratic processes and poison our intellectual food at its source. Their right to expel Communists from positions of influence should be qualified only by painstaking regard for justice in considering borderline and disputed instances.

The 10 Hollywood personalities involved in the contempt citations do not admit they are Communists, and some of them may not be. That is not quite the issue. Their refusal to assert under oath that they are not Communists makes them undeserving of positions of influence and power, and dangerous to the cause of civil rights.

The film industry has at last been aroused to its responsibility in protecting itself and the country against the Communist enemies of civil rights. The principle it has at last recognized—that enemies of civil rights should not be sheltered or tolerated in position of trust and influence—should be extended throughout the fabric of industry, business, politics and government.

Patterson, N. J., News, Dec. 3, 1947:

AN UNWISE AND DISASTROUS WEAKENING OF THE  
DEMOCRATIC PROCESS.

Every loyal American will emphatically agree with Eric Johnston of the Motion Picture Association that the ten movie industry employes who refused to tell the House Un-American Activities Committee whether or not they were Communists have "done a tremendous disservice to the industry" and "hurt" the cause of democracy immeasurably.

Even those who were appalled by the committee's conduct of some phases of its recent hearings can find scant

justification for the attitude of witnesses who contemptuously refused either to admit or deny membership in the Communist Party. The Bill of Rights guarantees every American broad freedom to think and speak as he pleases, but it guarantees him no right to wear false colors or to cloak his propagandist efforts in secrecy.

The issued raised by the Hollywood investigation in this respect could not be more cogently or thoughtfully presented than in the recent report of the President's Committee on Civil Rights. No one would question the sincerity of this committee's regard for civil liberties, yet it urges, for the express purpose of "strengthening the right to freedom of conscience," that legislation be enacted to require "all groups, which attempt to influence public opinion, to disclose the pertinent facts about themselves through systematic registration procedures."

"One of the things which totalitarians of both left and right have in common," the committee observes, "is a reluctance to come before the people honestly and say who they are, what they work for and who supports them . . . We do not believe in a definition of civil rights which includes freedom to avoid all responsibility for one's opinions. This would be an unwise and disastrous weakening of the democratic process. If these people wish to influence the public . . . they should be free to do so. But the public must be able to evaluate these views."

In urging the registration of all opinion-swaying groups the Civil Rights Committee makes it plain that "our purpose is not to constrict anyone's freedom to speak; it rather to enable the people better to judge the true motives of those who try to sway them." The "principle of disclosure," in short, is "the appropriate way to deal with those who would subvert our democracy." And that

all ballyhoo and indiscretions aside—is precisely the principle which the House Un-American Activities Committee was created to serve, and did in fact serve with its Hollywood hearings.

Buffalo, N. Y., News, Oct. 31, 1947:

### HOLLYWOOD DEFIANT.

In its investigation of Communism, the House Un-American Activities Committee laid itself open to criticism for entering hearsay testimony in the public record. This procedure was condemned as violating the spirit of the Bill of Rights.

But the committee cannot be criticized for putting to Hollywood writers and others appearing before it the question whether or not they are or have been Communists. This is a legitimate question; it is entirely consistent with the purpose for which the committee was created—to determine the extent and character of un-American activities and the spread of anti-American propaganda within the United States.

Certain of the Hollywood screen writers insolently refused to answer the question; and they very properly were held in contempt by the committee. In announcing the conclusion of the “first phase” of the investigation, Chairman J. Parnell Thomas did not indicate whether the committee was closing the book on Hollywood. The strange part of it was that Eric Johnston, president of the Motion Picture Association of America, should have given countenance to the recalcitrant screen writers by charging that the committee was using unfair methods in relation to them, such as would create “a damaging impression of Hollywood.”



This is plain hogwash. It is the defiant and arrogant screen writers who are creating a damaging impression. By their attitude they inferentially lend support to previous testimony that Communists have infiltrated into the industry—whether or not they themselves are Communists. Obviously, those who are Communists have been intent on insinuating Moscow propaganda into the movies. All such are missionaries of that faith; this is a condition of party acceptance. All Communists are un-American—enemies of the American way of life.

The Government has a right to know who in the motion picture industry are Communists, just as it has the right to know who among the labor leaders are of that faith. In short, it has the right to protect itself against their designs. They hold themselves subject to the dictates of a foreign power, a power which is waging a "cold war" against the United States. In the circumstances, a thoroughgoing American could hardly feel that he had good reason to refuse an answer to the question: Are you a Communist?

New York Herald Tribune, Oct. 22, 1947:

#### HOLLYWOOD IN WASHINGTON.

The first two days of testimony upon Communism in Hollywood before the House un-American Activities Committee have produced exactly what was expected of them: an abundance of unsubstantiated charges, some dizzying new definitions of Communism and a satisfactory collection of clippings for Mr. J. Parnell Thomas's scrapbook. A good many citizens of Hollywood have been called Communists, to the evident delight of Mr. Thomas and his witnesses. One man has already been thrown bodily from the hearing room, and Mr. Bartley Crum escaped the same

fate only because he was able to swallow his sense of indignity just before Mr. Thomas struck.

There are, without doubt, circumstances under which such an investigation as this one would be proper. If the moving pictures were undermining the American form of government and menacing it by their content, it might become the duty of Congress to ferret out the responsible persons. But clearly this is not the case—not even the committee's own witnesses are willing to make so fantastic a charge. And since no such danger exists, the beliefs of men and women who write for the screen are, like the beliefs of any ordinary men and women, nobody's business but their own, as the Bill of Rights mentions. Neither Mr. Thomas nor the Congress in which he sits is empowered to dictate what Americans shall think.

Some attempt was made to show that Communism was being permitted to creep into films, but in each case the attempt dissolved into the ludicrous. Mr. John Moffit, for example, cited as an example of the party line a scene in which a banker is portrayed as an unsympathetic man—a typical Hollywood stereotype that has been written into moving pictures since long before any Communist menace was noticed on the west coast. Mr. Moffit also firmly assured the committee that forty-four of a hundred Broadway plays constituted Communist propaganda, without mentioning how the fact has so far escape the notice of Broadway.

No doubt the revue is still only in its preliminary scenes, and Mr. Thomas has a good many more acts to trot out before he rings down the curtain. To date he has brought forth nothing to make the whole affair seem anything more than an attempt to seek personal aggrandizement on the taxpayer's funds. Not Hollywood but Congress is being

investigated here, and once again the testimony indicates that the system of Congressional investigating committees needs overhauling. The entire process, in which a committee chairman is allowed unlimited freedom and his targets must remain simply targets, is inherently offensive and should be changed to bring some degree of equity into the proceedings.

New York Herald Tribune, Nov. 27, 1947:

### COMMUNISM AND HOLLYWOOD.

It is doubtful whether any one, with the exception of Mr. J. Parnell Thomas, will feel happy over the action of the motion-picture industry in firing the ten persons cited for contempt of the Thomas committee and in henceforth barring Communists from the industry's pay rolls. The industry's own unhappiness is evident enough from the tortured language of the announcement, in which respect for justice and civil liberty struggles both painfully and obviously with the desire to escape the embarrassments brought down by Mr. Thomas's hippodrome.

Many will observe that the motion-picture business seems to have got along very well in the past utilizing the services of the evasive ten without discovering Communist propaganda turning up in its products. Many will feel that it is simply a case of a gigantic industry, always notoriously timid and sensitive to any kind of mass reaction, running to cover from popular hysteria, at the expense of destroying the livelihoods of a few writers and directors against whom nothing has been proved except that they evaded answering as to their political beliefs. It is neither a heroic nor an inspiring attitude. But is it inadmissible?

One cannot blink the fact that this is another of the difficult questions forced upon us by Communism, by its nature, its aims and, in particular, its methods. Communist secrecy and infiltration are facts, and it is difficult to argue that an industry of mass communications is denied by democratic principles the right of protecting itself against them. The ten put on a show before the Un-American Activities Committee which was damaging to the industry. Now they have issued from Hollywood an answering blast, denouncing their dismissal not merely as an invasion of their liberties but as part of an "attempt to control films, books and science in order to facilitate the dissemination of anti-democratic, anti-Semitic, anti-Negro and war-inciting doctrines."

Here is a piece of politically inspired propagandist nonsense of a kind which Hollywood certainly cannot be required to protect or encourage. It is hard to maintain that a mass-communication industry is powerless to deny employment on suspicion of secret membership in a subversive organization. This newspaper believes the power must be conceded; but it certainly should be used as sparingly as possible, and one trusts that the motion-picture industry's insistence on fairness and moderation will be observed.

The Raleigh Times, N. C., Nov. 1, 1947:

#### WHAT HAVE REDS GOT THAT OTHERS HAVEN'T?

The Communist Party advocates forceful overthrow of the United States Government, yet it sometimes seems that officials bend over backward to be nice to Communists.

Pin a Red label on someone, and he often can "get away with murder." He can get away with a lot of things

which would land a run-of-the-mine loyal American citizen in serious trouble. For, once a Commie is put on the spot all the good brethren put a halo of martyrdom about his marxist head and shed maudlin tears about his "civil rights" and "liberalism." And it is a Communist tradition to yell bloody murder about the Constitution and the Bill of Rights which the Communist Party seeks to destroy.

A disgusting spectacle has just closed in Washington. There, a dozen or so screen writers have been asked the simple question of whether or not they are, or have been affiliated with the Communist Party. To this question they have shrieked defiance at the House Committee on Un-American Activities, a quasi-judicial body, and hurled insults at its members.

In sum, these people consider themselves above the law. Their attitude not only insults the Un-American Activities Committee, but it insults every law-abiding American citizen as well.

If a plain, garden variety of American were to act as these fellows have acted, he would have landed in the well known hoosegow in short order. These recalcitrant witnesses have been cited for contempt. If they are not prosecuted vigorously, then the authorities responsible for their prosecution should hang their heads in shame.

And if the big moguls of the motion picture industry permit them to continue writing for the films their actions can be construed as a slap in the face of the law abiding public which supports them.



Ashtabula, O., Star Beacon, Nov. 6, 1947:

THE '\$64 QUESTION.'

Several subpoenaed witnesses appearing before the House un-American Activities Committee in Washington refused to answer what has been called the "\$64 question." This question is "are you now or have you ever been a member of the Communist Party?"

Motion picture writers stood on what they called their constitutional rights and declined to say yes or no. They face court action on charges of contempt as a result of their obstinate refusal to admit or deny they are or have been Communists.

These screen writers, who may have been advised by their attorney not to answer the question, do not make a good impression on public opinion by taking this attitude. For while it is quite possible for one who is not and has not been a Communist to refuse to answer this question, it is suspected that most persons who do not belong to and never have been members of this subversive so called party would reply to the query without quibbling over constitutional rights.

If someone who disapproved the committee, or its methods, or its personnel, or everything connected with it and wished to plague and annoy and embarrass it, he might decline to answer although not a Communist.

However, the impression the public will get from the refusal of these men to say whether or not they are or have been Communists is that they may have something to conceal. They make themselves suspect by declining to answer. The committee might call for—if it hasn't done so already—the F. B. I. files made during the war as it checked on Communists in this nation.

Toledo, O., Blade, Nov. 11, 1947:

#### ON QUESTIONS AND ANSWERS.

When we said sometime ago that we did not like the way the House Committee on Un-American Activities goes about smearing witnesses in its inquisitorial hearings, we did not mean that we liked the way some of those Hollywood chaps raved and ranted when they took the witness stand.

Americans standing on their traditional rights as free men in a democratic country don't have to spout forth gibberish. If they are asked questions about their private affairs or political opinions which no one has a right to ask, they can reply bluntly, "It's none of your business" or, if they prefer, "It's none of your blankety-blank business." If they are even asked questions about crimes which they have committed, they can refuse to answer on the grounds that they cannot be required to give incriminating evidence.

But though a free man in a democratic country is not required to answer the questions of police investigating a crime, it is hard to understand why an innocent man would refuse to do so. And it is equally difficult to understand why a good citizen would refuse to give pertinent information to any duly constituted government body. Just as a law-abiding citizen will want the law enforced, so will a tax-paying citizen want to see government funds wisely spent and carefully checked.

For these reasons, we are glad that the revival of the Hughes inquiry before the Senate War Investigating subcommittee has taken, so far, a saner turn. The committee shouldn't set out to smear the reputation of any citizen. Any citizen should be glad to supply the com

mittee with any information pertinent to its investigation. Only on that basis can all of us continue to enjoy those democratic rights which impose democratic obligations.

Chattanooga, Tenn. Chattanooga News-Free Press:

ONLY ONE VERDICT POSSIBLE.

If a man on trial in a court of law hears positive evidence given against him and fails to deny his guilt or to present any other defense, the jury has no choice but to conclude that he is guilty.

Of course the Hollywood characters who have been called before the House Un-American Activities Committee in its investigation of Communist infiltration into the movie colony are not on trial for any crimes or misdemeanors. But they have been summoned by a committee of the Congress of the United States, which has full legal powers to summon and to question them, in pursuance of its efforts to find out to what extent the Communists have succeeded in gaining a foothold in the moving picture business for the purpose of using the movies for the dissemination of their poisonous attacks on American life and American institutions.

Critics of the Hollywood Red probe have seized upon the inevitable pieces of trivia that have turned up in the evidence and have emphasized these in their efforts to discredit the investigation.

The evidence against the Hollywood writers who have refused to tell the committee whether or not they are Communists, however, is not trivial. The committee has heard positive testimony that they are Communists and detailed testimony on how some of them worked to carry out the Communist propaganda scheme in Hollywood.

Communist party membership cards identified as those of the accused men have gone into the record.

To date four of the Hollywood figures accused of being Communists have refused to answer this question—John Howard Lawson, who, it has been testified, was the Red “commissor” in Hollywood and instructed Communist writers to get “five minutes of the party line” in every picture; Dalton Trumbo, Albert Maltz and Alvah Bessie.

They have been cited for contempt of the committee and the charges should be pressed with the utmost vigor—against them and against all others who may adopt their tactics. They are not only technically in contempt for their refusal to answer questions; their conduct before the committee has been contemptuous in the extreme.

These men have been denounced as Communists by reliable witnesses. If they persist in their refusal to either confirm or deny the charges, the jury will have no choice in arriving at a verdict. The verdict will have to be one of guilt. The jury in this case is the people of the United States.

Greenville (Texas) Evening Banner, Oct. 30, 1947:

#### STRANGE DEFIANCE.

An American who is not affiliated with the Communist Party and does not sympathize with its theories in any particular, should not be ashamed to declare publicly that he is not a Communist. Some of the Hollywood big-wags, however, are not saying “yea” nor “nay” to the question: “Are you a Communist?” propounded at the House un-American Activities subcommittee hearing in Washington.

So far ten so-called “prominent” personages of Hollywood have defied the committee and have been cited for

contempt. It is probable that more will be cited before the hearing is ended.

It is the contention of the witnesses that the committee has no right to ask questions about political beliefs. Perhaps not, but regardless of the rights of the committee in regard to this particular question, a non-Communist should not hesitate to say that he is not a Communist, especially when he is a witness in a public hearing of national importance. It would be simple to say "no," but if he says nothing he gives both the committee and the public reason to wonder.

Houston, Texas, Post, Oct. 28, 1947:

#### RED FILM PURGE.

The dismissal by R-K-O studios of a producer and a director, two of the 10 film characters cited for contempt of the House investigating committee, is good as far as it goes. But the movie industry will not have gone far enough to satisfy public opinion until it fires the other eight men who arrogantly refused to tell the committee whether or not they were Communists.

In fact, the publicity of the investigation has alerted the American people to Red-slanted film propaganda, and henceforth more of them will spot the poison despite its sugar-coating in sweet emotional appeal.

Although the investigators of un-American activities did not probe deeply into the extent of left-wing penetration in the business of making movies, it brought the public a few facts about some of the people who write, direct and produce the film plays, and how they work. And if the industry itself now does not purge the pictures of such fouling, there may be a popular uprising next time.



Producer Adrian Scott's public comment on his discharge is typical of the attitude taken by all Reds, from Molotov on down. He calls the committee's contempt citation a "perversion of justice," and brands it as a "temporary triumph of John Rankin of Mississippi." But more than 300 House members voted to uphold the committee's action and less than a score voted against it.

Mr. Scott and his nine colleagues claimed the right to refuse to divulge their political affiliations under the guarantee of free speech. But Congress has taken the position, and the people will endorse it, that if scenario writers, directors and producers have the right to color their films Red, the public has a right to know who is doing the coloring.

Petersburg, Va., Progress-Index, Nov. 26, 1947:

#### ON THE WAY TO AN ANSWER.

By large majorities the House of Representatives voted contempt citations against ten motion picture writers and directors who refused to tell the un-American activities committee whether they were Communists. The matter now is in the hands of the Justice Department which promises prompt prosecution, with grand jury action coming possibly within a week. While the action of the House in support of its committee is a setback for the view that a person cannot be required to answer the question of Communist affiliation, this does not settle the issue, for it remains to be seen what the courts will do with it.

It does not follow that all or any of the ten are Communists, for though they may have been attempting to hide the fact of party membership they could have refused to answer because they felt their civil liberties were in

volved. If the un-American committee had conducted its affairs in a more acceptable fashion, relying only upon real evidence and allowing accused persons every opportunity to clear themselves, perhaps we would have been spared some of these performances, but the shortcomings of the investigating committee, serious as they are, do not justify refusal to answer yes or no to the question of Communist affiliation. In the prevailing atmosphere those who take that course need not be surprised to find themselves under greater suspicion than ever.

While the issue goes to the courts there are signs the motion picture industry is doing some housecleaning of its own, which is as it should have been all along. Hollywood's red menace can be sized up by saying it is by no means as great as the hysterical ones would have us believe but has real potential seriousness in that Communists with the usual determination and more than the usual supply of funds have occupied some key positions. An industry which has policed itself in other respects ought to be able to take care of this one, but evidently outside pressure was needed to bring it to the point of doing so.

